

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 6417
Cincinnati, OH 45201

Date: SEP 27 2002

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

-2-

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

W. J. Lerner

Director, Exempt Organizations

Enclosures: 3
Enclosure 1 -
Publication 892
Form 6018

Enclosure 1

Facts

You were incorporated under the laws of [REDACTED]. Your Articles of Incorporation describe your primary purposes as follows:

"... to provide an organization consisting of the co-owners of lots located in [REDACTED], a single-family residential subdivision located in [REDACTED], and more particularly described in the Declaration of Covenants, Conditions and Restrictions of said subdivision recorded at [REDACTED] in the [REDACTED] (the "Declaration"), in order to provide for the management, recreation, maintenance, preservation and architectural control of said subdivision."

Your application, Form 1024, states that your activities are to "Provide management, recreation, maintenance, preservation and architectural control of the subdivision."

You are supported by Homeowners' maintenance dues, which are equal for each homeowner. Your membership consists of all those individuals owning a lot in [REDACTED]. Membership is mandatory for all such homeowners.

According to information you provided during the application process, [REDACTED] consists of [REDACTED] residential lots along [REDACTED], a private road with gated access at both entrances to the subdivision. Only subdivision residents or persons admitted by residents can enter these gates. In Schedule B of your application, you state that you "maintain the common areas, such as road, gate, and mailboxes" in the subdivision. You indicated that road maintenance is a major use of funds.

Law

Section 501(c)(4) of the Code describes, in part, civic leagues or organizations not organized for profit that are operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterment and social improvements.

Enclosure 1

Application of Law

Under section 501(c)(4), a homeowners' association must operate for the benefit of the general public, i.e., it must provide a community benefit. See below for a further discussion of Service position and Court findings with respect to homeowners' associations under section 501(c)(4).

In the case of Flat Top Lake Association v. United State, 868 F.2d 108 (4th Cir. 1989), the court confirmed the denial of section 501(c)(4) status to a homeowners' association that maintained a private lake accessed by a private road, open only to lot owners in a 375-lot residential subdivision surrounding the lake. Citing Revenue Ruling 74-99, discussed below, the Court stated that "Clearly Congress believed that an organization cannot serve social welfare if it denies its benefits to the general public ... Wholly private activity, however meritorious, confers no such benefit which would render [exemption] appropriate."

Revenue Ruling 72-102, 1972-1 C.B. 149, describes a homeowners' association that maintained streets and sidewalks that were available for use by the community as a whole. It was held that this organization qualified for exemption under Code section 501(c)(4).

Rev. Rul. 74-99, 1974-1 C.B. 131, which clarifies Rev. Rul 72-102, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The Ruling states that three elements must be satisfied:

- 1) it must serve a "community" that bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and,
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The Ruling also states that a "community", within the meaning of section 501(c)(4) of the Code, is not merely "an aggregation of homeowners brought together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein." The ruling further emphasizes that, in order to be exempt, a homeowners' association cannot restrict public access to the property and facilities that it maintains.

Enclosure 1

Rev. Rul. 80-63, 1980-1 C.B. 116, addresses pertinent questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Code of an otherwise qualifying homeowners' association. This Ruling further clarifies that organizations which restrict public access to areas and facilities that they maintain do not satisfy the requirement of serving a "community."

Government's Position

Based upon the facts presented above, we hold that you do not qualify for tax exemption under 501(c)(4) of the Code because you are not operated exclusively for the promotion of social welfare. Rather, you exist only for the private benefit of your members, and your common areas are not for the use and enjoyment of the general public.

You are similar to the organization described in Flat Top Lake Association v. United State, 868 F.2d 108 (4th Cir. 1989) because you are also not serving the social welfare of the community since your benefits are not available to the public at large. Like the organization described in this case, you are serving a substantial private rather than public purpose and as a result, your organization does not qualify for tax exemption under section 501(c)(4).

You do not meet the requirements for exemption as discussed in Revenue Rulings 74-99 and 80-63 because you do not serve an area that constitutes a "community" and you maintain private property that is not accessible to members of the general public.

Conclusion

Based on the facts that you have provided in your application for recognition of exemption, we have determined that you are not operated exclusively for general welfare of the people of the community rather than private purposes.

Accordingly, you do not qualify for exemption as a social welfare organization under section 501(c)(4) of the Code and fail to qualify for exempt status under any other subsection of Internal Revenue Code 501(c).

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

SEP 27 2002

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption -

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501 (), effective

☐ Classification as a private foundation described in section 509(a)), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date